

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2007 DEC 13 AM 10:41

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RICKY WILKINSON,

Petitioner,

v.

No. 1:06-CV-234

ROB HOFFMAN, Commissioner, Vermont  
Department of Corrections,

Respondent.

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BY  CLERK  
DEPUTY CLERK

**MOTION FOR LEAVE TO FILE STATE COURT RECORD AND FOR  
HEARING ON THE MERITS**

NOW COMES the petitioner, through counsel, and hereby moves that this matter be set for an early non-evidentiary hearing. As reasons therefor counsel says as follows:

1. This is a petition for habeas corpus brought pursuant to 28 U.S.C. § 2254 and the Rules Governing § 2254 Cases, challenging petitioner's incarceration pursuant to a state court conviction.
2. The petition was filed and leave to proceed in forma pauperis granted on December 29, 2006 by Judge Niedermeier.
3. The Court required respondent to file an answer within 30 days, but the time was extended by stipulation.
4. On April 30, 2007 respondent filed a memorandum in response, but not the relevant transcripts or the briefs and opinion in the state court appeal, as required by Rule 5 of the Rules Governing § 2254 Cases.
5. On October 2, 2007, petitioner filed a memorandum in support of the petition.

6. Despite repeated requests, respondent has not complied with Rule 5.

Petitioner's October 2 memorandum is the last docketed filing as of the date of this motion.

7. Petitioner requests an early hearing in this matter. He does not require an evidentiary hearing, but requests an opportunity to argue the merits of his case, in view of the importance of the legal question involved.

8. Transcripts of the petitioner's state court prosecution were prepared in connection with his appeal to the Vermont Supreme Court.

9. Petitioner's counsel has copies of all transcripts, as well as the documents required to be filed by Rule 5(d), is prepared to file copies, and requests leave to do so in lieu of an appropriate filing by the respondent.

### **MEMORANDUM OF LAW**

The Court can not be asked to reach the merits of this petition without having in hand the relevant state court transcripts, briefs, and opinion. The respondent's failure to file these readily available documents has stalled the case since petitioner's October 2, 2007 filing. Petitioner has copies of everything, and given the respondent's inaction the Court may properly order petitioner to file the relevant record.

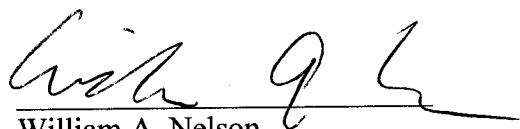
The respondent is required to furnish those portions of the transcripts which he believes relevant. The court may order the furnishing of additional portions of the transcripts upon the request of petitioner or upon the court's own motion.

Rules Governing § 2254 Cases, Rule 5, Advisory Committee Notes. Compare *Thompson v. Greene*, 427 F.3d 263 (4th Cir. 2005) (enforcing Rule 5's requirement that exhibits be served on petitioner).

WHEREFORE, petitioner requests that the Court order petitioner to file the documents required by Rule 5, in lieu of respondent's filing, and set this matter for an early hearing.

Dated: December 11, 2007

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'William A. Nelson', written over a horizontal line.

William A. Nelson  
52 High Street  
Middlebury, VT 05753  
802-388-6781  
Counsel for Ricky Wilkinson

cc: Kurt Kuehl  
Robert Plunkett

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**CERTIFICATE OF SERVICE**

I, William A. Nelson, co-counsel for petitioner, do hereby certify that I have served petitioner's Motion For Leave To File State Court Record And For Hearing On The Merits upon counsel for the respondent, by mailing copies thereof to:

Robert Plunkett, Deputy State's Attorney  
Bennington County State's Attorney's Office  
150 Veterans Memorial Drive  
Bennington, VT 05201

and

Kurt Kuehl, Assistant Attorney General  
Office of the Attorney General  
103 South Main Street  
Waterbury, VT 05671-0701.

Dated at Middlebury, Vermont, December 11, 2007.



William A. Nelson  
Counsel for Petitioner